

Appl. No. 10/617,326  
Amdt. Dated May 3, 2007  
Reply to Office action of November 3, 2006

**REMARKS/ARGUMENTS**

Claims 64-49 are pending in the instant application. Claims 64-69 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 26 and 30 of copending application no. 10/356,240. Claims 64-69 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 49 and 53 of copending application no. 10/761,794. Claims 64-69 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 2, 12, 13, 15, 17, 19, 20, and 21 of United States Patent 6,630,126. Claims 64-69 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-8 and 24-34 of United States Patent No. 6,808,699. Claims 64-69 stand rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,453,188 to Ardenkjaer-Larsen et al.

Claims 64-69 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 26 and 30 of copending application no. 10/356,240. Applicant notes that this application has a later priority date than the instant application. It is respectfully submitted that a terminal disclaimer filed in view of the cited reference would not work to limit the term of the instant case. Applicant respectfully inquires whether the Examiner's objection would be more properly applied to the cited case than to the present application. Clarification is respectfully requested.

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Claims 64-69 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 49 and 53 of copending application no. 10/761,794. Applicant notes that this application also has a later priority date than the instant application. It is respectfully submitted that a terminal disclaimer filed in view of the cited reference would not work to limit the term of the instant case. Applicant respectfully inquires whether the Examiner's objection would be more properly applied to the cited case than to the present application. Clarification is respectfully requested.

Claims 64-69 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 2, 12, 13, 15, 17, 19, 20, and 21 of United States Patent 6,630,126. Applicants are amenable to filing a terminal disclaimer to this parent case of the instant application upon receiving a notice of allowance for the instant case.

Claims 64-69 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-8 and 24-34 of United States Patent No. 6,808,699. Applicant are amenable to filing a terminal disclaimer to this parent case of the instant application upon receiving a notice of allowance for the instant case.

Claims 64-69 stand rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,453,188 to Ardenkjaer-Larsen et al. This rejection is respectfully traversed.

The present invention evaluates the effectiveness of a gene therapy at a treatment site by injecting the subject with hyperpolarized  $^{129}\text{Xe}$  and generating an image of the hyperpolarized  $^{129}\text{Xe}$  about the target site. The method involves evaluating the response of the signal from the hyperpolarized gas.

Ardenkjaer-Larsen disclose a method of hyperpolarizing both a hyperpolarizable gas and an MR imaging agent. The gas is used to transfer its polarization to the MR imaging agent. The MR imaging agent is then administered to the subject such that the image generated will be substantially only from the MR imaging agent (see Column 3, lines 6-8). As noted at Column 3, lines 19-21, Ardenkjaer-Larsen state that “[o]ne advantage is that substantially the whole of the hyperpolarisable gas is removed from the administrable medium prior to administration”. Thus, Ardenkjaer-Larsen are teaching away from the present invention in which it is the hyperpolarized gas which is used to provide the signal from the target site.

Therefore, as Ardenkjaer-Larsen teaches away from the present invention, Ardenkjaer-Larsen fails to disclose, teach or suggest the instant invention so as to render the instant invention obvious. Applicant respectfully submits that the present invention is patentably distinct thereover. Reconsideration and withdrawal of the rejection are respectfully requested.

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In view of the remarks made hereinabove, Applicant respectfully submits that the instant application, including claims 64-69, are patentably distinct over the prior art. Favorable action thereon is respectfully requested.

Any questions with respect to the foregoing may be directed to Applicant's undersigned counsel at the telephone number below.

Respectfully submitted,

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